United Nations S/2002/41

Security Council

Distr.: General
10 January 2002

Original: English

Interim report of the Secretary-General on the situation concerning Western Sahara

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1380 (2001) of 27 November 2001, by which the Council, taking note of my letter to the President of the Security Council dated 12 November 2001 (S/2001/1067), extended the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) until 28 February 2002. The Council requested me to keep it informed of all significant developments in an interim report by 15 January 2002 and to provide an assessment of the situation by 18 February 2002.

2. By its resolution 1359 (2001) of 29 June 2001, the Security Council supported fully my efforts to invite all the parties to meet directly or through proximity talks, under the auspices of my Personal Envoy, James A. Baker III, and encouraged them to discuss the draft Framework Agreement and to negotiate any specific changes they would like to see in it, as well as to discuss any other proposal for a political solution which might be put forward by the parties, to arrive at a mutually acceptable agreement. The Council affirmed that, while those discussions went on, the official proposals submitted by the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO) to overcome the obstacles preventing implementation of the settlement plan (S/21360 and S/22464 and Corr.1) would be considered. The present report covers developments since my previous report to the Council, dated 20 June 2001 (S/2001/613).

II. Activities of the Personal Envoy of the Secretary-General

3. During the reporting period, my Personal Envoy, James A. Baker III, invited the Governments of Algeria and Mauritania and the leadership of the Frente POLISARIO to send delegations to meet with him in Pinedale, Wyoming, United States of America, from 27 to 29 August 2001. In his letters of invitation, my Personal Envoy expressed the hope that Algeria, Mauritania and the Frente POLISARIO would discuss with specificity the elements of the draft Framework Agreement in order to reach an early, durable and agreed resolution of the conflict over Western Sahara. He explained that the Government of Morocco was not being invited to that meeting, since it had indicated to him that it was prepared to support the draft Framework Agreement. He advised of his intention to confer with the Government of Morocco about any proposed changes, after hearing the views of the Governments of Algeria and Mauritania, as well as those of the Frente POLISARIO. In his letter to the Frente POLISARIO, my Personal Envoy indicated that the latter's official proposals of 28 May 2001 (S/2001/613, annex IV), aimed at overcoming the obstacles to the implementation of the settlement plan, would also be considered at the meeting.

4. In Wyoming, after an introductory gathering with all three delegations, my Personal Envoy first met with the Frente POLISARIO to consider in detail its proposals of 28 May 2001. The Mauritanian delegation was present at that meeting. My Personal Envoy asked for clarifications about some of the proposals, while commending the Frente POLISARIO for some of its

02-20544 (E) 100102 100102

concessions aimed at facilitating the resumption of the implementation of the settlement plan. He pointed out that the concurrence of the Government of Morocco would be required in order for some of the proposals to be implemented. He also pointed out that other Frente POLISARIO proposals would require action by the Security Council under Chapter VII of the Charter of the United Nations.

5. My Personal Envoy met separately with the Algerian delegation to discuss the draft Framework Agreement. The Algerian delegation reiterated its general views on and objections to the proposed document. It did not engage in a specific and detailed discussion about it as requested by my Personal Envoy, but indicated that it would send him specific clarifications shortly.

6. My Personal Envoy then met again with the Frente POLISARIO delegation to discuss the draft Framework Agreement. The Mauritanian delegation also attended that meeting. As in his meeting with the Algerian delegation, my Personal Envoy asked for an open and frank discussion, with assurances that no issue would be considered as finally agreed until all issues were agreed. He expressed the hope that the Frente POLISARIO representatives would point to specific problems about the draft Framework Agreement, presenting their own proposals if possible.

7. The Frente POLISARIO delegation stated that it did not wish to engage in a specific and detailed discussion on the draft Framework Agreement. It expressed the view that the provisions of that document would lead to the integration of Western Sahara with Morocco. The delegation nevertheless promised to provide my Personal Envoy with detailed clarifications at a later stage, after conferring with its leadership.

8. The Mauritanian delegation assured my Personal Envoy of its Government's support for any solution to the problem of Western Sahara that would promote peace and stability in the region and have the support of the parties.

9. Subsequently, on 4 October 2001, the Secretary-General of the Frente POLISARIO, Mohamed Abdelaziz, submitted to my Personal Envoy a memorandum containing the position of the Frente POLISARIO on the draft Framework Agreement (see annex I to the present report).

10. On 7 October, President Bouteflika provided my Personal Envoy with the comments of the Government of Algeria on the draft Framework Agreement (see annex II to the present report).

11. On 31 October, my Personal Envoy forwarded to the Government of Morocco the comments and observations received from the Frente POLISARIO and Algeria, with a request that it provide him with its own comments and observations. At the same time, he advised that, at the Wyoming meeting, he had discussed with the Frente POLISARIO its proposals to overcome the obstacles to the implementation of the settlement plan and had commended it for some of the concessions made. Since the concurrence of the Government of Morocco would be necessary to implement some of those proposals, he asked that the Government revert to him at its earliest convenience, with its own comments and observations on the Frente POLISARIO proposals.

12. On 10 November, the Permanent Representative of Morocco to the United Nations forwarded the observations of his Government on the comments of Algeria and of the Frente POLISARIO concerning the draft Framework Agreement, as well as on the latter's proposals to overcome the obstacles in the implementation of the settlement plan (see annex III to the present report).

III. The ceasefire and other aspects of the settlement plan

13. During the reporting period, and until the expiration of his appointment on 30 November 2001, my Special Representative, William Eagleton, continued his consultations with the Government of Morocco and the Frente POLISARIO on the current state of affairs and the peace process in Western Sahara. He also met with the Algerian and Mauritanian authorities.

14. On 30 October 2001, I informed the Security Council of my decision to appoint William L. Swing (United States of America) as my Special Representative for Western Sahara (S/2001/1041). The President of the Security Council responded on 2 November (S/2001/1042). Mr. Swing assumed his functions in the mission area on 11 December 2001, and has since visited Rabat and the Tindouf area of

Algeria, for introductory calls on the Moroccan authorities and on the Frente POLISARIO leadership.

A. Appeals process

15. During the reporting period, the Identification Commission continued to consolidate and collate all data on applicants to the referendum, collected during their identification and the submission of appeals. The Commission proceeded with the electronic archiving of individual files, which is essential to preserving those data, including photographs and fingerprints. All appellants' claims of having family members included in the provisional voters list have also been researched. The Acting Chairman of the Commission at MINURSO headquarters in Laayoune and the office of the Commission in Tindouf continued to maintain contacts with the coordinators of the two parties.

16. Pending the resolution of outstanding issues that may enable the resumption of the appeals process, the Identification Commission will maintain a core of some 40 staff to undertake the essential activities outlined above.

B. Military aspects

17. As at 4 January 2002, the military component of MINURSO stood at the authorized strength of 230 military personnel (see annex IV). Under the command of Brigadier-General Claude Buze (Belgium), the military component continued to monitor the ceasefire between the Royal Moroccan Army and the Frente POLISARIO military forces, which has been in effect for the past 10 years, since 6 September 1991. There has been no indication on the ground that either side intends to resume hostilities in the near future.

18. During the reporting period, discussions continued between MINURSO and the Frente POLISARIO, at various levels, with a view to easing or lifting the restrictions imposed by the latter on the freedom of movement of United Nations military observers east of the defensive sand-wall (berm) since January 2001. As reported to the Security Council since then (S/2001/148, S/2001/398 and S/2001/613), MINURSO ground patrols are usually not allowed closer than 800 metres to Frente POLISARIO combat units or observation posts and are required to be escorted at all times by Frente POLISARIO liaison officers. Large tracts of land south and east of the MINURSO team site at Agwanit are still out of bounds. MINURSO air reconnaissance remains limited to the 30-kilometre restricted area immediately east of the berm and has to follow air routes approved by the Frente POLISARIO. Despite the efforts of MINURSO, no significant progress can be reported towards the lifting of those restrictions. I call upon the Frente POLISARIO to cooperate to that effect.

19. On the western side of the berm, MINURSO military patrols continued to visit and inspect Royal Moroccan Army ground units larger than company size, in accordance with the ceasefire arrangements between MINURSO and the Royal Moroccan Army. From 22 May to 25 October 2001, MINURSO monitored and confirmed the destruction, by the Royal Moroccan Army, of four TOW missiles, two anti-tank mines and 462 detonators and munitions in the Ankesh, Laayoune and Dakhla areas, during six destruction operations.

20. Since my report of 20 June 2001 to the Security Council (S/2001/613), MINURSO military patrols have observed no further roadwork in the Guerguerat area of Western Sahara, at the south-western tip of the Territory. In April-May 2001, Moroccan military authorities had begun preparations for the construction of an asphalted road towards the Mauritanian border, but suspended them at the request of MINURSO and several Member States.

21. The restrictions outlined in paragraph 18 above resulted to a large extent from the passage of the Paris-Dakar rally through Western Sahara in early January 2001, which had raised tensions in the region at the time (see S/2001/148). For the 2002 event, the rally organizers sought from both parties their permission to use the same route as last year, but without an overnight stop in the Territory. As was eventually agreed, the rally undertook a simple liaison transfer across the Territory during the night of 3 to 4 January 2002. No incident was reported.

C. Civilian police aspects

22. As at 4 January 2002, the strength of the civilian police component of MINURSO stood at 26 officers (see annex IV), under the command of Inspector General Om Prakash Rathor (India). MINURSO civilian police officers continued to protect files and

sensitive materials at the Identification Commission centres at Laayoune and Tindouf and to undertake training and planning activities. In that respect, MINURSO civilian police officers continued to attend briefings by the Liaison Office of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Laayoune, on the protection content of voluntary repatriation and on international instruments concerning refugees.

D. Preparatory work for the repatriation of Saharan refugees

23. During the reporting period, UNHCR continued to carry out its mandated responsibilities for the refugees in the Tindouf camps and to coordinate with MINURSO. On 22 July 2001, UNHCR conducted a meeting of its Humanitarian Working Group in Algiers, aimed at maintaining active focus on the needs of Western Saharan refugees. In addition to the World Food Programme (WFP) and the European Commission Humanitarian Aid Office (ECHO), representatives of 18 donor countries also attended the meeting. On 13 September 2001, UNHCR discussed with the Secretariat its plan for cross-border confidence-building measures for the Western Saharan refugees. UNHCR intends to discuss further with the parties the modalities for implementing that plan, with a view to bringing about its early implementation.

24. On 26 and 27 October 2001, UNHCR conducted a coordination workshop with its implementing partners, ECHO and WFP, and with refugees, to set up a mechanism for planning, monitoring and evaluating the assistance programme. UNHCR and its implementing partners have ensured adequate water development and supply at two Tindouf camps and are pursuing joint efforts to achieve the same objective at the other two camps in the area.

25. UNHCR, together with partner agencies, held regular food coordination and planning meetings in Algiers and in the Tindouf area. However, as a result of financial constraints, there was a shortage of basic food supplies at the end of 2001. UNHCR and WFP are conducting planning and donor sensitization efforts, to be able to continue to provide adequate assistance to the refugees in 2002.

E. Prisoners of war, persons unaccounted for and detainees

26. In its resolution 1359 (2001), the Security Council urged the parties to solve the problem of the fate of people unaccounted for and called upon them to abide by their obligations under international humanitarian law to release without further delay all those held since the start of the conflict.

27. From 2 to 6 November 2001, a representative of the International Committee of the Red Cross (ICRC) met with and interviewed in Laayoune 23 former Frente POLISARIO combatants who had been unaccounted for, as well as the spouse of another who had been out of Laayoune at the time of the ICRC visit. The Frente POLISARIO had submitted tracing requests for all of them. In addition, on 6 November, Morocco released 25 Saharan detainees, including 24 civilians arrested since 1999 and one military personnel arrested in 1979 and serving a life sentence.

28. From 20 November to 3 December 2001, an ICRC team visited the remaining 1,477 prisoners of war held by the Frente POLISARIO, providing them with medical and mail services. During the visit, ICRC was informed by the Frente POLISARIO that one prisoner had recently died and another had escaped, which accounted for the decrease in the number of prisoners by two since May 2001.

29. On 2 January 2002, the Frente POLISARIO announced its decision to release 115 prisoners of war. It is expected that they will be repatriated shortly, under the auspices of ICRC.

F. Organization of African Unity

30. The observer delegation of the Organization of African Unity (OAU) to MINURSO, led by the Senior Representative, Ambassador Yilma Tadesse (Ethiopia), continues to provide valuable support to the Mission. I wish to reiterate my appreciation for the contribution of OAU.

IV. Other developments

31. On 22 October, in a message addressed to me, the Secretary-General of the Frente POLISARIO expressed his concerns over certain recent developments in

Western Sahara, in particular the signing of contracts by Morocco with two foreign oil companies for offshore oil reconnaissance in Western Sahara.

32. On 17 November, demonstrations took place in the town of Smara, resulting in clashes with security forces and arrests of several dozen demonstrators. Fifteen of the arrested are currently under detention awaiting trial in Laayoune. Calm was restored the following day. In a letter to me, the Secretary-General of POLISARIO protested these events.

V. Financial aspects

33. The General Assembly, by its resolution 55/262 of 14 June 2001, appropriated the amount of $48.8 million, equivalent to a monthly rate of some $4.1 million, for the maintenance of MINURSO for the period from 1 July 2001 to 30 June 2002. In connection with the reduction of personnel in the Identification Commission, as well as other related cost reductions, I shall continue to reassess the resource requirements of the Mission and revert to the General Assembly with consequential adjustments, if necessary.

34. As at 15 December 2001, unpaid assessed contributions to the special account for MINURSO amounted to $83.8 million. The total outstanding assessed contributions for all peacekeeping operations at that date amounted to $1,979.1 million.

VI. Observations

35. Pursuant to Security Council resolutions 1359 (2001) and 1380 (2001), I intend to provide, before the end of the present mandate of MINURSO on 28 February 2002, an assessment of the situation and, as appropriate, recommendations on the future mandate and composition of MINURSO. In the meantime, I count on Morocco and on the Frente POLISARIO, as well as on Algeria and Mauritania, to continue to cooperate with my Personal Envoy in his efforts to find an early, durable and agreed resolution of the conflict over Western Sahara.

36. While the recent release of a number of Moroccan prisoners of war, as well as Saharan detainees, is a positive development, the continued detention of over 1,350 prisoners of war, most of them for more than 20 years, is a serious humanitarian issue. I once again join ICRC in calling upon the Frente POLISARIO to release all of them without further delay.

37. The situation of the Saharan refugees in the Tindouf camps is also a matter of growing concern. I appeal to the international community to provide generous support to UNHCR and WFP, in order to meet the humanitarian needs of those refugees until their voluntary and durable return to the Territory. At the same time, I expect that Morocco and the Frente POLISARIO will extend their full cooperation to enable UNHCR to implement confidence-building measures, as called for by the Security Council in its resolution 1263 (1999) of 13 September 1999.

38. In closing, I would like to pay tribute to my former Special Representative, William Eagleton, for the efforts he has devoted to the cause of peace in Western Sahara. I commend him for the leadership he has displayed and for the dedication and professionalism with which he has undertaken his mission.

Annex I

Memorandum from the Frente Popular para la Liberación de Saguía el-Hamra y del Río de Oro (Frente POLISARIO)

[Original: French]

As a decolonization problem, the question of Western Sahara has regularly been included in the United Nations agenda since 1966.

This consideration of the question by the United Nations has enabled the international community to establish clearly and affirm forcefully that the Saharan people have the right to self-determination under General Assembly resolution 1514 (XIV), which advocates the self-determination of peoples under colonial domination.

The efforts by both the United Nations and the Organization of African Unity relating to Western Sahara have aimed essentially to create favourable conditions for the Saharan people to exercise their right to self-determination.

All these efforts culminated in the adoption of a settlement plan whose chief objective was the organization and holding of a "free, fair and impartial referendum for the self-determination of the people of Western Sahara".

The settlement plan was confirmed by the Houston Agreements, which were accepted by both parties and endorsed by the United Nations. In the report he submitted to the Security Council following the signature of the Agreements, the Secretary-General explicitly recognized that the obstacles to the implementation of the settlement plan had been overcome.

The initiatives since 1997 by the Secretary-General's Personal Envoy, Mr. James Baker III, have served to further the peace process undertaken by the United Nations.

The Houston Agreements have questionably led to undeniable advances, particularly the identification of all persons who have submitted a request to that effect to the Identification Commission, the publication of the provisional voter list, the establishment of an appeals procedure and the pre-registration of most of the refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) with a view to their repatriation.

Capitalizing on those advances, the Security Council has, since the Houston Agreements, twice set a date for the referendum (December 1998 and July 2000). Security Council resolutions 1238 (1999) and 1263 (1999) indicated to the parties its expectation that the appeals process would not be turned into a second round of identification. Despite these positive developments, Morocco resorted to various subterfuges, particularly the inundation of the Identification Commission with over 130,000 appeals, in order to neutralize United Nations action and counter its initiatives.

Faced with that situation, the Security Council adopted resolutions 1342 (2001) and 1349 (2001) expressing its expectation that "the parties ... will continue to try to resolve the multiple problems relating to the implementation of the Settlement Plan and try to agree upon a mutually acceptable political solution to their dispute over Western Sahara".

The Frente POLISARIO itself has constantly sought to facilitate the implementation of the settlement plan and thereby bring about a just and durable peace in Western Sahara. This readiness on its part was clearly expressed in the memorandum submitted to the Personal Envoy in London in June 2000 as well as during the Geneva and Berlin meetings held, respectively, in July and September 2000. By underscoring that readiness, the Saharan party reaffirmed that it was disposed to consider seriously and responsibly any suggestion made by the United Nations or by the other party for resolving the difficulties that prevented the referendum from being organized and held.

Accordingly, the Frente POLISARIO, as a sign of its good will and spirit of compromise, submitted proposals on 31 May 2001 for overcoming the actual or potential obstacles hindering the implementation of the settlement plan, especially those resulting from Morocco's introduction of tens of thousands of appeals.

Instead of giving proper recognition to these efforts by the Saharan party and furthering the dynamics of peace, Morocco has, contrary to all expectations, deliberately chosen to block the referendum process and renege on its earlier commitments. Rather than endeavouring to put into effect the appeals protocols, the Secretariat has taken a wait-and-see attitude designed to make it less likely that the settlement plan will be implemented and to shift the efforts to resolve the conflict towards a possible third alternative. Thus, a draft "framework agreement on the status of Western Sahara" is being advocated, which constitutes a serious departure from the agreed process and from the approach followed by the United Nations for the last three decades to bring about the decolonization of Western Sahara.

Beyond its express provisions, this proposed framework agreement in reality seeks to confer on the occupier the authority of an "administrative power" and unduly opens the door to giving Morocco a putative right to delegate powers it does not have, to the so called "inhabitants of the Territory" of Western Sahara. Such an arrangement clearly violates the sacred right of the Saharan people to determine their own fate and runs counter to the mandate given to the Secretary-General of the United Nations.

There can be no question that Morocco, as the occupying Power, whose presence in Western Sahara has not been recognized by any international organization, cannot claim that it has any standing whatsoever as an "administrative power", let alone that it has the power to "delegate" rights that arise naturally from the sovereign attributes of the Saharan people.

By conferring on Morocco exclusive competence over "the preservation of the territorial integrity against secessionist attempts whether from within or without the territory" and by allowing it to maintain its troops, police, administration and authority in the Territory, the proposed framework agreement in effect grants Morocco the attributes of sovereignty, especially since, in the words of the draft, "all laws ... and all decisions of the courts must respect and comply with the constitution of the Kingdom of Morocco ...".

Moreover, the progress made in voter identification, an undeniable achievement, is completely wiped out by the proposed framework agreement. By replacing the notion of the "Saharan people" with the concept of the "population of Western Sahara", the draft agreement challenges the validity of all the criteria established by the United Nations for determining voter qualifications. In so doing,

the draft agreement sets the stage for integrating Western Sahara into Morocco, not only given the massive presence of Moroccan settlers now in the Territory, but also because of the possibility that new migratory flows might occur during the transitional period.

The proposed framework agreement, if it were put into effect, could make the integration of the Territory of Western Sahara into Morocco an accepted principle. That this is so is evident especially in the recent statements by the highest Moroccan authorities, from King Mohamed VI on down.

It is therefore obvious that the proposed framework agreement, which is silent on the inalienable right of the Saharan people to self-determination, makes a mockery of principles to which the international community is committed, especially the Saharan people's right to freedom of expression through a "free, fair and impartial referendum". Moreover, the proposed agreement unquestionably paves the way for the precipitous integration of the Saharan Territory into Morocco. What Morocco has been unable to accomplish by force or through the ballot box might be brought about by implementing the proposed framework agreement.

Since this is its assessment of the situation, the Frente POLISARIO is convinced that the differences that exist between the parties cannot be used as a pretext for suspending the implementation of the settlement plan. Too much progress has been achieved in putting it into effect to justify abandoning it and replacing it with an approach that is in flagrant violation of the thinking and principles that have always prevailed in the decolonization work of the United Nations.

The United Nations must at all costs continue trying to implement the settlement plan, because experience has shown in such situations that whenever there was the political will and the United Nations endeavoured to bridge the gap between differing viewpoints, the most insurmountable obstacles and difficulties gave way to consensus solutions. The refusal of one party to cooperate in pursuing the implementation of the settlement plan cannot be an argument for abandoning it, for that would be tantamount to giving a disproportionate voice to Morocco, which might avail itself of that power each time a proposal did not coincide with its own interests.

Beyond the fact that it is biased and unfair, the draft framework agreement sets a bad precedent, to the extent that it rewards aggression and intransigence.

The Frente POLISARIO has categorically rejected the draft framework agreement, and in taking that position officially has explained the reasons why, which come down mainly to the fact that the proposed agreement in no way guarantees that the Saharan people will exercise that right to self-determination, but in reality paves the way for a programmed annexation of Western Sahara by the Kingdom of Morocco.

Utterly convinced that the draft framework agreement does not offer a basis for settling the Western Sahara problem or even a means of relaunching negotiations, the Frente POLISARIO, in a responsible spirit of compromise, made a point of providing the necessary clarifications during the meeting in Pinedale, Wyoming, from 27 to 29 August 2001, and making specific proposals that should make it possible to revive the settlement plan. During those consultations, the Frente POLISARIO also laid out its position regarding post-referendum guarantees that must be assured as part of the overall search for a solution.

In making these proposals, the Frente POLISARIO once again underscores its complete readiness to cooperate with the Secretary-General's Personal Envoy, Mr. James Baker III, in whom once again he expresses confidence while thanking him for the efforts he is making to promote a just and durable solution to this conflict. The Frente POLISARIO also undertakes to cooperate with the United Nations in any effort that will enable the implementation of the settlement plan to be resumed. Similarly, it reaffirms its support for any approach leading to a solution that guarantees the sacred right of the Saharan people to self-determination.

Annex II

Comments by the Government of Algeria on the draft framework agreement on the status of Western Sahara

[Original: French]

In its memorandum addressed to the Secretary-General of the United Nations and to his Personal Envoy on 22 May 2001, Algeria set forth and explained in a clear and detailed manner its objections to the proposals for the settlement of the question of Western Sahara contained in the draft framework agreement on the status of the Territory.

In this document, following a long and rigorous exposition, Algeria concluded that the draft framework agreement would confirm the illegal occupation of the Territory of Western Sahara by providing for its integration into the Kingdom of Morocco; this would be in violation not only of the Charter of the United Nations but also of the doctrine of the Organization in the area of decolonization, all its relevant resolutions, including resolution 1514 (XV) containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and also the commitments to the genuine self-determination of the Saharan people which have been constantly reaffirmed by the two parties themselves (particularly in the Houston Agreements) and by the international community represented by the General Assembly and the Security Council.

In other words, Algeria, in its memorandum, found that the draft framework agreement would seriously undermine the non-self-governing status of the Territory, thereby constituting a grave violation of the inalienable right of the Saharan people to self-determination and an outright negation of the Saharan people.

In total, the approach defined in the draft framework agreement would call in question the responsibility of the United Nations vis-à-vis the people of Western Sahara and is clearly not conducive to finding an equitable and lasting solution to the conflict in Western Sahara.

Having been invited by the Personal Envoy of the Secretary-General of the United Nations to take part in the talks organized in Pinedale, Wyoming from 27 to 29 August 2001 in implementation of Security Council resolution 1359 (2001), Algeria at that time reiterated the reasons for its objection to the draft framework agreement.

The Algerian delegation also carried out with the Personal Envoy of the Secretary-General a critical analysis of the draft framework agreement, and explained Algeria's views on the conditions which needed to be met for the organization of a referendum on the self-determination of the people of Western Sahara, which is still the only way of settling this question in an equitable and lasting manner.

In response to the request by the Personal Envoy, whose efforts it commends and whom it assures of its support, Algeria is reproducing below, in writing, the comments and views which its delegation put forward during the talks held in Pinedale, Wyoming.

1. Algeria stands by the objections set forth in its memorandum of 22 May 2001. By way of reminder, it believes, in particular, that the approach taken in the draft

framework agreement is based on a negation of the status of Western Sahara as a Non-Self-Governing Territory, which since 1966 has been included on the list of such Territories maintained by the United Nations.

2. This approach leads to a form of recognition of the "sovereignty" of the occupying Power in the Territory, this occupying Power having been requested to undertake a "devolution of authority" in the context of the plan for "autonomy". Hence, and because it is based on an illegal premise, the approach of the draft framework agreement is itself unacceptable.

3. The draft framework agreement places on an equal footing the Saharans who are recognized as such and are included in the lists already drawn up by the Identification Commission and the new residents settled since the illegal occupation of the Territory. Thus, given that they will be deciding on the future of their Territory, the Saharan people will be deprived of their right of self-determination since they will not be able to exercise that right on an exclusive and independent basis.

4. Lastly, the approach contained in the draft framework agreement is unacceptable because it makes an unjustified and inappropriate choice between, on the one hand, the right to self-determination of the Saharan people, which is a matter of contemporary international legality, and, on the other, a logic based on "historical rights" aimed at confirming the integration of the Territory into the Kingdom of Morocco by making it an accomplished fact.

5. Meanwhile, this logic was recently confirmed in the comments made by the Moroccan sovereign to the French newspaper *Le Figaro* of 4 September 2001 when he said: "... I have settled the question of the Sahara which has been consuming us for the past 25 years ... We have worked hard and in the strictest confidentiality for 18 months to ensure that the 11 members of the United Nations Security Council recognize the legitimacy of Moroccan sovereignty over Western Sahara ... We agree that an equitable solution should be found within the framework of Moroccan sovereignty ...".

6. Far from achieving an equitable and lasting settlement of the conflict, the course suggested in the draft framework agreement would thus confront the international community with even greater difficulties than those which had so far hindered the implementation of the settlement plan and the agreements which had, nevertheless, been negotiated, accepted and signed by the two parties with a view to the holding of a free, fair and impartial referendum for the self-determination of the people of Western Sahara, organized and monitored by the United Nations.

7. While maintaining its objection to the very approach of "autonomy" and to its declared aim, namely "a referendum on the status of the Territory", Algeria reiterates that an equitable and lasting solution to the conflict in Western Sahara must meet an imperative objective, which is still the exercise by the people of Western Sahara of their inalienable right to self-determination. This objective is supported by the international community; it was reaffirmed by the Security Council in resolution 1359 in which it reiterated its "full support for the ongoing efforts of the United Nations Mission for the Referendum in Western Sahara (MINURSO) to implement the Settlement Plan and agreements adopted by the parties to hold a free, fair and impartial referendum for the self-determination of the people of the Western Sahara".

8. It is for this reason that Algeria believes that, in order to overcome the persistent disagreements between the two parties, and rather than resorting to a period of so-called "autonomy", it would be better for the United Nations to take sovereign responsibility for the implementation of its own settlement plan for the conflict in Western Sahara which has already been accepted by the two parties.

9. In this respect, the United Nations should initiate a short transition period during which the Territory of Western Sahara would be placed under its exclusive authority and administration. Such a period would be more conducive to building trust between the two parties under the impartial aegis of the United Nations and at the same time would make it possible, inter alia, to resolve the question of pending appeals before the Identification Commission in a calmer atmosphere.

10. Before this transition period, objective conditions would have to be met, in line with the status of the Territory as a Non-Self-Governing Territory. To this end, it will be necessary to implement the measures already accepted by the two parties, in particular:

10.1 The orderly withdrawal of Moroccan troops from Western Sahara and the cantonment of the personnel authorized to remain there under the supervision of MINURSO, along with the cantonment of the military forces of the Frente POLISARIO, in accordance with the agreements already concluded between the two parties. This preliminary measure would be all the more necessary in that the transition period would involve the final passage from the stage of a mere ceasefire to that of the final resolution of the conflict;

10.2 The dismantling and disarming of the paramilitary forces of the occupying Power in the interior of the Territory of Western Sahara and the repeal of the laws and regulations impeding freedom of movement;

10.3 Demining throughout the Territory and particularly along the ceasefire line;

10.4 The release of prisoners of war and political prisoners by each of the two parties in accordance with the provisions already agreed upon to this end.

11. During the transition period, the United Nations will have exclusive responsibility for:

11.1 Administering the Territory of Western Sahara;

11.2 Preserving security, peace and order in the Territory;

11.3 Ensuring the preservation and protection of human rights and fundamental freedoms without discrimination of any kind;

11.4 Promulgating all regulations relating to the organization and conduct of the referendum on self-determination;

11.5 Upholding and preserving the law in an impartial and objective manner;

11.6 Ensuring, in accordance with the commitments undertaken by the two parties, the repatriation of refugees with a view to their participation in the referendum on self-determination;

11.7 Monitoring the conduct of the referendum campaign while respecting the commitments already made by the two parties and laid down in the code of conduct;

11.8 Organizing and monitoring the entire process of the referendum on self-determination in accordance with the provisions already established and accepted by the two parties;

11.9 Announcing the results of the referendum on self-determination.

12. During the transition period, the United Nations authority will be responsible for implementing the foregoing provisions and will be empowered to suspend any law or regulation which could impede the process of the organization of a free and fair referendum on self-determination, or could call in question the results of such referendum announced by the United Nations.

13. The referendum on self-determination will be open to Saharans of voting age identified by the United Nations Identification Commission on the basis of criteria accepted by both parties, as shown on the provisional list of voters of 30 December 1999. During the transition period, the United Nations Identification Commission will consider and resolve in a rigorous and impartial manner the claims made by those whose names have not already been included for participation in the referendum on self-determination.

14. The referendum on self-determination will be conducted on a date to be determined by the Security Council before the end of the transition period. It will be organized and monitored by the United Nations through MINURSO in accordance with the agreements already concluded between the two parties and the code of conduct already accepted by them.

15. Immediately prior to the transition phase, the two parties will confirm their commitment to respect the results of the referendum on self-determination and, on the basis of those results, to implement the provisions deriving from them and those which have already been included in an agreement accepted and signed by them.

16. Through the Security Council, the United Nations will ensure respect by the two parties of the results of the referendum on self-determination.

It would certainly have been easier for Algeria to confine itself to affirming that it would support any solution which accorded with the principles of the United Nations Charter and was accepted by the Kingdom of Morocco and by the Frente POLISARIO.

However, recognizing the efforts made by the United Nations and particularly by the Personal Envoy of the Secretary-General, to whom it would like to express its gratitude and reaffirm its trust, Algeria undertakes to support any step with a view to reaching a just and lasting solution to the conflict in Western Sahara.

It goes without saying that such a solution must be in conformity with the principles of the United Nations and accepted by both parties to the conflict, and also approved by all the parties which are directly concerned or involved.

Annex III

Comments by the Government of Morocco

[Original: French]

In its resolution 1359 (2001) of 29 June 2001, the United Nations Security Council "*encourages* the parties to discuss the draft framework agreement and to negotiate any specific changes they would like to see in this proposal".

Pursuant to this resolution, Mr. James Baker III, Personal Envoy of the Secretary-General, met with representatives of Mauritania, Algeria and the Frente POLISARIO in Wyoming, United States of America, from 27 to 29 August 2001.

Following the Wyoming meeting, the Personal Envoy asked the Frente POLISARIO and Algeria to provide clarification of their respective positions on the draft framework agreement on the Status of Western Sahara. Mauritania, for its part, expressed its support for any solution that might promote peace and stability in the region.

As soon as resolution 1359 (2001) was adopted, the Kingdom of Morocco, for its part, had stated that it was prepared to negotiate on the basis of the draft framework agreement in full and complete respect for the unanimous will of the Security Council.

Under resolution 1359 (2001), in order for the negotiations to take place, the Frente POLISARIO and Algeria also needed to express clearly their willingness to enter into them on the basis of the framework agreement, which Mr. Kofi Annan, in the above-mentioned report, called "the last window of opportunity for years to come"; both the Secretary-General and his Personal Envoy had concluded that the settlement plan could not be implemented and that another approach must be sought.

The Secretary-General has appealed urgently to the Frente POLISARIO and, specifically, to Algeria to enter into the negotiation process since, as the Council notes in its resolution 1359 (2001), "according to the rules of the consultations established by the Personal Envoy nothing would be agreed until everything had been agreed"; it therefore "*emphasizes* that by engaging in these negotiations the parties will not prejudice their final positions".

Not until October did the Frente POLISARIO and Algeria provide the Personal Envoy with the requested clarifications (they were transmitted to the Moroccan Government by Mr. Baker on 31 October 2001).

In reading these documents, it must be recognized that, despite the unanimous will of the Security Council and the assurances provided by it, the Frente POLISARIO and Algeria have not clarified anything at all and have deliberately chosen not to reply to the urgent request addressed to them by the Secretary-General, his Personal Envoy and the Security Council. This refusal, expressed four months after the adoption of resolution 1359 (2001), can in no way be justified on so-called grounds of principle since both the Secretary-General and the Security Council stated that the draft framework agreement "aims at reaching an early, durable and agreed resolution of the conflict ... in a way that does not foreclose self-determination, but indeed provides for it". And, indeed, the draft framework agreement states that within five years a referendum on the final status of the Territory would be held.

Unfortunately, our observations on the Frente POLISARIO memorandum and Algeria's comments must be limited to the manner in which both of them have failed to meet their international obligations by not addressing the substance of the proposed framework agreement.

In its "memorandum", the Frente POLISARIO not only categorically rejects the draft framework agreement; it even objects to any United Nations approach to "the question of Western Sahara" which allowed the universal Organization to take initiatives with a view to a definitive solution thereof, whether through the settlement plan or through the draft Framework Agreement. This approach is based on the legality of Moroccan presence in the Territory, which justifies considering the possibility of the latter's simple integration or of a status under which Morocco would agree to some devolution of authority "for all inhabitants and former inhabitants of the Territory that was genuine, substantial and in keeping with international norms".

By denying Morocco the right to delegate all power to the inhabitants, the Frente POLISARIO thus places itself in opposition to the Secretary-General of the United Nations and to the Security Council, which have proposed that Morocco, as "administrative Power", should delegate certain powers enumerated in the draft framework agreement.

In oratory that it has repeated for many years, the Frente POLISARIO concludes by asking the United Nations to pursue implementation of the settlement plan, knowing that all such efforts have clearly ended in deadlock.

On this occasion, the Moroccan Government wishes to stress that, despite the Security Council's urgent appeal, the Frente POLISARIO has taken no steps to free the 1,479 people whom it has held in detention for over 20 years, in flagrant violation of humanitarian law, in camps located in Algerian territory. Everyone knows that Morocco has fulfilled all its obligations in that regard, cooperating fully with the international agencies concerned in order to determine the fate of various people who have disappeared.

Regarding the "Official proposals submitted by the Frente POLISARIO to overcome the obstacles preventing the implementation of the settlement plan" (contained in an annex to document S/2001/613 of 29 June 2001), paragraph 3 of Security Council resolution 1359 (2001) should be recalled. It affirms that "while discussions referred to above go on, the ... proposals submitted by the Polisario Front ... will be considered". However, the negotiations have still not yet begun, owing to the refusal of both Frente POLISARIO and Algeria to embark on them, on the basis of the draft framework agreement on the Status of Western Sahara. In these conditions, we do not see how the above-mentioned proposals of Frente POLISARIO can be examined. In any case, in compliance with resolution 1359 (2001), the Kingdom of Morocco cannot agree to examining them.

For its part, in its comments, Algeria considers that the draft framework agreement is based on an "illegal premise" and declares that it is "unacceptable". By doing this, Algeria in effect denies the request of both the Secretary-General and his Personal Envoy and ultimately rejects the request addressed to it by the Security Council in its resolution 1359 (2001) of 29 June 2001.

This challenge to the international community is coupled with a very belated objection to the legality of Morocco's presence on its territory. Quite apart from the

fact that the principle of this devolution had been broached by the Secretary-General at least a year ago without raising any objections from Algeria, we need only to recall that the Moroccan presence was put in place in full compliance with international law. Indeed, in its resolution 380 (1975) of 6 November 1975, the Security Council had called on "all parties concerned and interested" to undertake negotiations under Article 33 of the Charter of the United Nations. On 14 November 1975, Morocco, Mauritania and Spain concluded the Madrid Agreement (registered with the United Nations on 9 December 1975, as number 14450), by which Spain terminated "the responsibilities and powers which it possesses over that Territory as administering Power". The Agreement, which, in its own terms, had been concluded in accordance with the negotiations advocated by the United Nations, creates a temporary administration, while affirming that "the views of the Saharan population, expressed through the Djemaa (assembly of tribal chiefs of the territory), will be respected".

Immediately afterwards, on 10 December 1975, the United Nations General Assembly took note of the Madrid Agreement and requested the organization of appropriate consultation with the population (resolution 3458 B (XXX)). This consultation took place at the beginning of the following year (26 February 1976), under the terms of the Madrid Agreement, which had also been approved by the Djemaa.

The legality of the presence of the Kingdom of Morocco and the legal grounds for its sovereignty have thus been well established for over 25 years. Moreover, Morocco had recovered its provinces of "Western Sahara" in the same way that it had recovered the neighbouring provinces of Tarfaya and Sidi Ifni following negotiations with Spain, in 1958 and in 1969. But the settlement of the question of the Sahara in accordance with international law did not suit Algeria, which deliberately chose to create a regional dispute, in a totally artificial way, and has taken steps to internationalize it.

Despite this, the Government of Morocco has become involved, in good faith, in all the attempts made by the United Nations to arrive at a fair and durable solution to this dispute. We sincerely hoped that Algeria would take advantage of the "last window of opportunity" offered by the United Nations and truly commit itself to the negotiation process.

However, this did not happen and, instead of cooperating with the United Nations, Algeria has chosen to continue headlong on its current path, in an escalation that is sterile and dangerous for the peace and stability of the Maghreb.

This escalation even includes a desire to entrust the entire administration and security of the territory to the United Nations, by arbitrary analogy and assimilation with some other peace process carried out under the responsibility of the universal Organization.

Evidently, by reacting in this way, Algeria does not make the slightest attempt to advance the Security Council's initiative for the peaceful settlement of the regional dispute over the Sahara. On the contrary, it closes the door on the offer made to it to negotiate in order to build a peaceful and prosperous future for the Maghreb.

But we know that neighbourly relations have their own logic and requirements and we hope that the door will be reopened, so that we can discuss our respective positions in all frankness and good faith.

The Kingdom of Morocco is always ready to do this, in respect of its sovereignty and the principles upon which it is founded and organized.

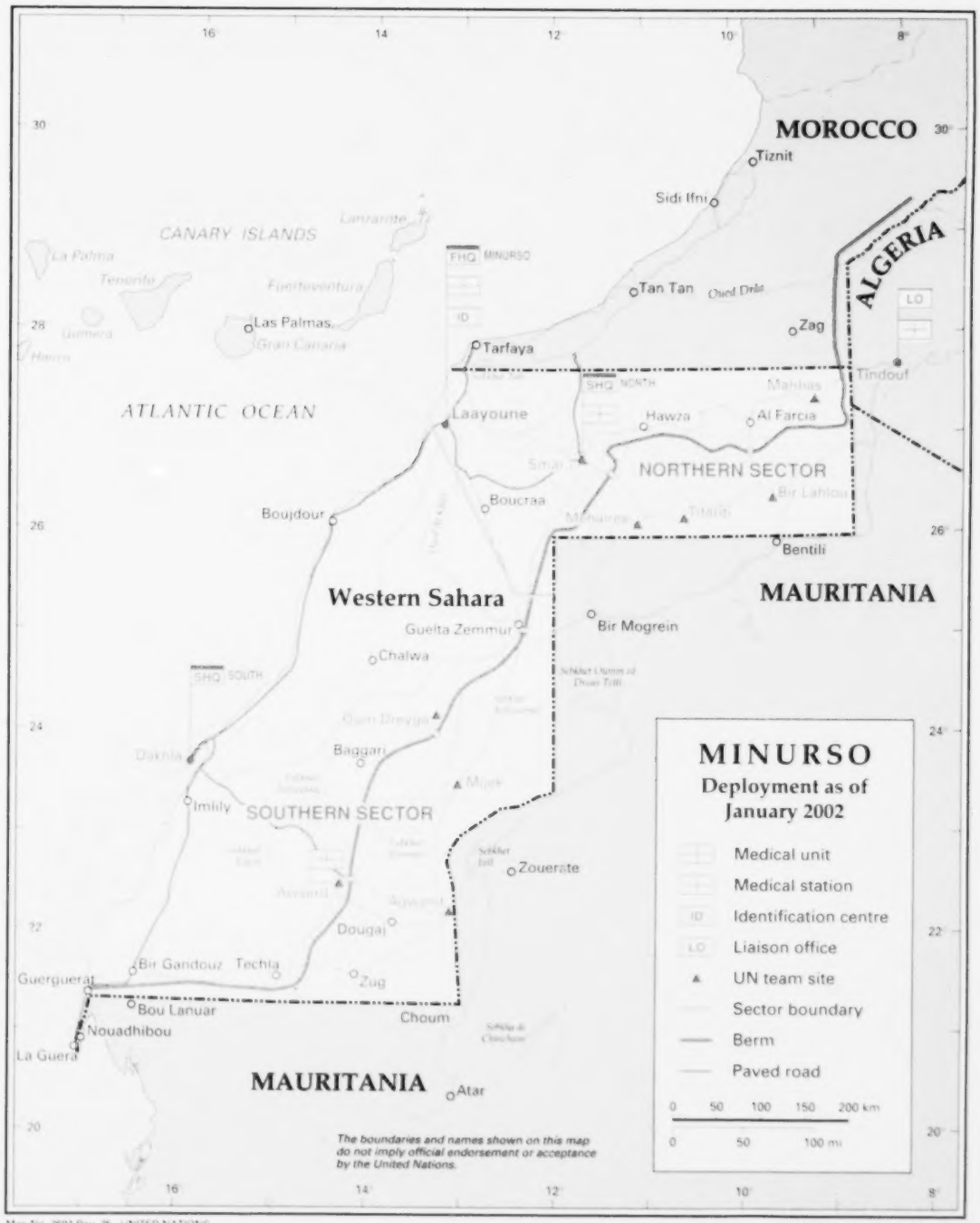
The Government of Morocco will continue cooperating with the Security Council, the Secretary-General and his Personal Envoy, in accordance with international law. It takes this opportunity to express its gratitude to Mr. Kofi Annan and Mr. James Baker for their untiring and constant efforts to advance a fitting peace process in our region of the Maghreb.

Annex IV

United Nations Mission for the Referendum in Western Sahara — contributions as at 4 January 2002

	Military observers	*Force commander*	*Troops*	*Civilian police*[a]	*Total*
Argentina	1				1
Austria	3				3
Bangladesh	6				6
Belgium		1			1
China	16				16
Egypt	19				19
El Salvador	2				2
France	25				25
Ghana	6		7		13
Greece	1				1
Guinea	3				3
Honduras	12				12
Hungary	6			1	7
Ireland	3				3
India				2	2
Italy	5				5
Jordan				5	5
Kenya	8				8
Malaysia	13			3	16
Nigeria	5			3	8
Norway				2	2
Pakistan	6			2	8
Poland	6				6
Portugal	4			4	8
Republic of Korea			20		20
Russian Federation	25				25
Senegal				3	3
Sweden				1	1
Uruguay	13				13
United States of America	15				15
Total	**203**	**1**	**27**	**26**	**257**

[a] Authorized strength is 81.



Map No. 3691 Rev. 35 UNITED NATIONS
January 2002

Department of Public Information
Cartographic Section